

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: ) 19-MD-2875(RBK-JS)  
)  
) Camden, NJ  
VALSARTAN NDMA PRODUCTS ) June 12, 2019  
LIABILITY LITIGATION ) 3:04 p.m.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE  
BEFORE THE HONORABLE JOEL SCHNEIDER  
UNITED STATES MAGISTRATE JUDGE

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Colloquy

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1 (The following was heard via telephone conference at  
2 3:04 p.m.)

3 THE COURT: Good afternoon, Counsel. Judge  
4 Schneider here in the matter of In Re: Valsartan MDL. We're  
5 on the docket -- excuse me, we're on the record. Docket  
6 Number 19-2875. And thank you very much for your indulgence  
7 in moving the conference call up to 3 o'clock from 4 o'clock.  
8 I'm very grateful.

9 Could we have the names of counsel on the phone  
10 starting with plaintiff's counsel?

11 MR. SLATER: Good morning, Your Honor. Adam Slater  
12 for the plaintiffs.

13 MR. HONIK: Ruben Honik for plaintiff.

14 MR. NIGH: Daniel Nigh for plaintiff.

15 THE COURT: Okay, defense counsel?

16 MR. GOLDBERG: Seth Goldberg on behalf of the  
17 Princeton defendants and the joint defense group.

18 MS. COHEN: Good afternoon, Judge. This is Lori  
19 Cohen on behalf of the Teva defendants and the joint group as  
20 well.

21 MR. TRISCHLER: Clem Trischler, Your Honor. Good  
22 afternoon. Representing Mylan Pharmaceuticals and the joint  
23 defense group.

24 THE COURT: Okay. Is that all?

25 MR. PAREKH: Good afternoon, Your Honor. This is

1 Behram Parekh on behalf of the plaintiff. (inaudible)

2 THE COURT: Anybody else? Okay, great. Counsel,  
3 thank you for your agendas. Like I said when we spoke, I'm  
4 perfectly fine for these calls with separate submissions so  
5 long as it's the same issues everybody addresses in the same  
6 order. So I have absolutely no problem with what you  
7 submitted. It was a terrific update on the issues.

8 I'm on the bench. My law clerk's getting my -- my  
9 copies of the letters, so I don't have it in front of me now.  
10 Let's just go down each of the topics one by one. I've read  
11 them. I know what the issues are. And we'll see what we have  
12 to discuss.

13 So what's issue number -- what's topic number one?

14 UNIDENTIFIED COUNSEL: The confidentiality order,  
15 Your Honor.

16 THE COURT: Okay. I really want to get that entered  
17 because I just don't want someone to argue that they don't  
18 have to produce documents because the order isn't entered yet.  
19 Where are we on that?

20 UNIDENTIFIED COUNSEL: Your Honor, the  
21 confidentiality order was revised by the defense and sent over  
22 to us late Monday. Honestly, between then and now I haven't  
23 had a chance to go through it in detail, but I would expect  
24 that no later than Monday I can get back to the defense and  
25 tell them if there's any remaining issues.

Colloquy

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1 MS. COHEN: And Judge, good afternoon again. This  
2 is Lori Cohen. So we're actually waiting to get the  
3 transcripts, and I don't mean to follow up with any criticism,  
4 but we wanted to go that, you know, compared to the draft as  
5 well. So he did send us a plan. I think we were all hoping  
6 that we could have the draft to look at as well.

7 And Mr. Slater's timeline works for us. We may have  
8 some additional minor changes. But to your concern, I don't  
9 think anyone is going to hold back on producing anything,  
10 because I think you suggested at the last conference that  
11 anything produced be subject to the, you know, the same  
12 confidentiality order under the district anyway. So I think  
13 we can -- we won't need the lack of an executed signed  
14 confidentiality order. I think we would produce them subject  
15 to the confidentiality order that exists as you suggested.  
16 And hopefully we'll have this resolved by then anyway.

17 THE COURT: Okay. Terrific. Did -- did the parties  
18 order the transcript?

19 MS. COHEN: We did, Your Honor. And I think it was  
20 supposed to be done this week. Again, I know it was -- it was  
21 a long hearing. So again, I don't want to be a critic of --

22 THE COURT: No, no, no. They're very good. They're  
23 very good.

24 MS. COHEN: And we could -- yeah, we should have it.  
25 We were supposed to have -- I think the estimate was Monday,

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1 and we didn't get it on Monday. So I think we want to have it  
2 to go through some -- there are a few additional items. We  
3 can wait and see if the plaintiffs agree with us, and then  
4 raise them with you. Or I can, you know, kind of highlight a  
5 few of them now. But I think we're very close.

6 THE COURT: Okay.

7 MS. COHEN: We just have -- you know, there are a  
8 few -- a few lingering issues, and maybe the transcript will  
9 help us, and maybe we can come back to you with one or two  
10 last points.

11 THE COURT: That's fine. I understand why you want  
12 to see the transcript. If you don't get it by tomorrow, we'll  
13 follow up with the transcription service. They're usually  
14 very, very good.

15 So you'll get the transcript. I agree, the  
16 production won't be held up. You can still rely on the  
17 district's order. And we'll put this on the agenda that it  
18 absolutely will be finalized by -- when is the next  
19 conference, June 26th?

20 MS. COHEN: Right.

21 THE COURT: Yeah. No problem. We'll finalize it  
22 June 26th.

23 MS. COHEN: Judge if we -- now if we have -- we  
24 can't reach agreement, and just to alert you we had four  
25 additional imperatives and some red lines that we thought

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1 still needed to be worked out. So it's not a huge amount. I  
2 know it took some time at the last conference. If we still  
3 have a few issues, should we set a separate call with you to  
4 go over them, or present them to you in an email? What's the  
5 best avenue to get this finalized if we want to do it before  
6 the next conference?

7 THE COURT: You can just send me a letter with what  
8 the issues are and I'll rule on it. Or, it's only a week or  
9 two, you could put it in the joint agenda for the 6/26 and  
10 we'll decide it at the conference.

11 MS. COHEN: Okay.

12 THE COURT: What's ever easier.

13 MS. COHEN: I'm happy to get it, to highlight it  
14 even now, but since plaintiff they hadn't fully reviewed it  
15 yet, it might make more sense to let them do that, and then we  
16 can talk through it and then come back to you.

17 THE COURT: I agree. I think that makes much sense.

18 UNIDENTIFIED COUNSEL: Just one thing Judge, because  
19 Ms. Cohen was making -- had thrown together the idea of  
20 possibly talking before the conference. I had informed Your  
21 Honor that I will be, unless something changes, not at the  
22 next conference because I'm supposed to be out of the state on  
23 vacation, which I'm trying to change but having some trouble.  
24 If we have any discreet issue, then I think it would be  
25 helpful just to talk to them directly with Your Honor.



Colloquy

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1 THE COURT: Let's do it.

2 UNIDENTIFIED COUNSEL: Rather than me having to  
3 explain it to someone else. Could we call, maybe, if that is  
4 an issue?

5 THE COURT: No problem. Send me a email about -- or  
6 a quick call. Absolutely no problem. We'll find time to get  
7 it finalized.

8 UNIDENTIFIED COUNSEL: Thank you, Judge.

9 THE COURT: Happy to --

10 UNIDENTIFIED COUNSEL: It won't be an issue.

11 THE COURT: Right. We'll be happy to do that to get  
12 it done.

13 Core discovery. I've read Mr. Goldberg's letter. I  
14 have the letters in front of me now. It looks like, you know,  
15 they'll be produced timely. We have the extension. There's  
16 going to be the rolling production. And it looks like the  
17 production's going to be pursuant to the ESA protocol. So do  
18 we have an issue, Mr. Slater?

19 MR. SLATER: No. If it's pursuant to the ESI  
20 protocol, that's fine.

21 THE COURT: What I'd like to do is I hope --

22 MR. GOLDBERG: Your Honor -- Your Honor, this is  
23 Seth Goldberg. I think we have to clarify what -- when we're  
24 talking about producing under the ESI protocol. Because our  
25 production as we envision it will not be under the ESI

1 protocol to the extent that that protocol requires certain  
2 categories of metadata be produced with the documents. We  
3 intend to produce these documents, this batch of documents of  
4 core discovery, as Bates stamped PDFs with a subset of  
5 categories of metadata. The ESI protocol, which is a much  
6 more complex -- requires a much more complex set of metadata  
7 and production requirements.

8 Our understanding as set forth in the core discovery  
9 order and how we've approached core discovery was, for  
10 expediency's sake, it was important to get the documents which  
11 are not in traditional ESI emails from (inaudible) in an ESI  
12 format so that we can get them over to plaintiffs quickly.  
13 And that's how we've approached it. We think that that's a  
14 sufficient producible for what the Court has envisioned with  
15 respect to core discovery.

16 MR. SLATER: Your Honor, it's Adam Slater. I'm  
17 going to hand it off to Mr. Parekh in one second. Just -- and  
18 the other issue with that, as we expressed in our letter,  
19 because we didn't believe that the fact that it's core  
20 discovery should limit our avail -- our ability to have the  
21 full information.

22 Now, what we said in our letter is if they want to  
23 produce it in that format now, but then in a short time  
24 produce it compliant with the ESI protocol, we can live with  
25 that if it's a timing issue. But, and I'll let Mr. Parekh

1 talk a little more about the technicalities right now on some  
2 of the types of documents.

3 THE COURT: Let me -- can I just weigh in on this  
4 for a second? Given that this is the quote-unquote "core  
5 discovery," and what we envisioned by that is the  
6 unquestionably relevant and some of the most important  
7 documents in the case, it would seem logical that eventually  
8 plaintiffs would get the same sort of metadata that they are  
9 going to get with the other documents in the case.

10 I have no problem, zero problem, if these documents  
11 are produced to plaintiff so that they could get the ball  
12 rolling. And subsequently down the road we'll get supplements  
13 from defendants as to the requested data.

14 But what I'd like to do is this. I'd like to handle  
15 all issues regarding the core discovery at one time. Just  
16 like the insurance information, I would be very pleasantly  
17 surprised if plaintiff is satisfied with everything they  
18 receive, that it's in full 100 percent compliance with the  
19 Court's order. Something tells me that won't happen, although  
20 I would love for that to happen.

21 So what I think is the prudent way is, let's wait  
22 until July whatever when the production is supposed to be  
23 complete, and then plaintiff can raise every issue at once  
24 about the production, including it wants X, Y, Z metadata for  
25 these documents, and we'll just deal with the issues at one

1 time collectively rather than dealing with it piecemeal.

2 I don't see any prejudice to the plaintiff. They're  
3 going to get the documents. They could start reviewing them.  
4 And if the Court rules that the metadata has to be  
5 supplemented, you'll get it in due course.

6 Any problem if we proceed that way, plaintiffs?

7 MR. SLATER: No problem at all, Judge. That's very  
8 reasonable.

9 THE COURT: Okay. So I don't know if the defendants  
10 are taking the position they don't think they have to produce  
11 the missing metadata for the core discovery. But it doesn't  
12 matter. We'll deal with that issue at one time, Mr. Goldberg.

13 MR. GOLDBERG: Yeah, Your Honor -- Your Honor, I  
14 just would, you know, just sort of highlight one issue that is  
15 -- I guess two issues. One is when we saw, you know, Mr.  
16 Slater's letter, I think the defendants independently looked  
17 at their productions. And you know, certainly producing -- I  
18 don't think the defendants are opposed to producing that kind  
19 of metadata.

20 I think one of the questions is if we go through now  
21 with the full production of the information, and then are  
22 required to produce -- produce it pursuant to the ESI protocol  
23 if we're under the ESI protocol, there is going to be A) a  
24 significant expense that's, you know, sort of something that  
25 we're going to have to address. And there will be a lag time

1 for that. And just as long as that -- those two issues are  
2 addressed by the Court, I think that we're -- we're not at  
3 this point formally opposed to producing the metadata.

4 THE COURT: So why don't you just produce it?

5 MR. GOLDBERG: We can, you know, (inaudible). We've  
6 taken this approach to really -- to satisfy the Court's  
7 requirement that it be done quickly. And you know, had -- had  
8 there not been this need to have it done quickly, we would  
9 have done one production of the core discovery subject to the  
10 ESI protocol, but somewhere down the line. And so that shifts  
11 -- there's a tension here because, you know, plaintiffs may  
12 just say hey, reproduce it.

13 But, you know, there's a real cost to that. You're  
14 running a -- you're running thousands of documents with  
15 various kinds of files through a vendor. And so it is --  
16 there's a very real cost to that that we should just be  
17 cognizant of. And while we can produce this stuff now, that  
18 will be an issue that we deal with later. Or do, you know,  
19 the Court say let's put off the production of core discovery.  
20 We're not suggesting that, but we are suggesting that there is  
21 some sort of burden that's being put on the defendants by  
22 having to reproduce information.

23 It's not clear to us why every category of metadata  
24 would be required with respect to this kind of information.  
25 And maybe a better approach to address this cost issue, and

1 maybe we can deal with it in July, is to say plaintiffs  
2 demonstrate why you need more metadata. Because we shouldn't  
3 have a compromised position where we're producing certain  
4 kinds of documents in the files, i.e. spreadsheets, right?  
5 Because that's the kind of information you need to manipulate.

6 But the way we intend to produce the PDFs should  
7 reflect the format (inaudible). So what you're -- what  
8 essentially may be happening here is to satisfy a hyper-  
9 technical concern about (inaudible) causing a significant  
10 burden on the defendants to reproduce a large volume of  
11 information.

12 THE COURT: Mr. Goldberg, here's what I have to say  
13 to what you just said. If the defendants want to avoid the  
14 expense of doing something twice, then when you make your  
15 production by July, produce all the requested metadata in the  
16 ESI protocol. If you don't want to do that, we'll deal with  
17 the issue separately when we deal with all core discovery  
18 issues. And it's very possible this Court may order the  
19 defendants to produce the supplemental metadata in the ESI  
20 protocol.

21 So you know, if the defendants are worried about the  
22 cost, then just produce it the first time. I don't have a  
23 problem with that. I'm not going to delay the production  
24 dates any longer.

25 MR. GOLDBERG: Right. I think the question is, you

1 know, is there -- is that -- is it -- and we'll certainly look  
2 at that, Your Honor, is it feasible for us to do something  
3 like that in the next month with respect to this information.  
4 We do have the production on June 17. And so, you know, I  
5 think it's unlikely that we would be able to produce, let's  
6 say, the ANDA files which we're all planning to produce next  
7 week along with the metadata for those ANDA files, The  
8 metadata that would be required under the ESI protocol.

9 THE COURT: I'm not -- I agree with you. I'm not  
10 sure you do need the metadata for the ANDA files. I'm not  
11 sure. If there's a legitimate --

12 MR. GOLDBERG: And that's where we would say -- we  
13 would say well, maybe they should demonstrate why they need  
14 that kind of metadata for those kinds of files if we've  
15 already produced the PDFs. They can see how they were  
16 produced to the FDA. Maybe that should be sufficient with  
17 respect to these kinds of documents, ANDA files and drug  
18 master files.

19 THE COURT: I think we're going in --

20 MR. GOLDBERG: This is not an email.

21 THE COURT: I think we're going in circles. So if  
22 that's the position the defendants want to take, like I said,  
23 it's perfectly fine with the Court. Don't produce it, and  
24 after July all these issues will be dealt with at one time.  
25 All of your objections to producing metadata pursuant to the

1 ESI protocol, and all of plaintiff's likely objections to the  
2 completeness of the production, which I hope doesn't happen  
3 but we live in the real world. It's going to happen. We'll  
4 deal with them all at one time. Okay?

5 So let's go to the next issue, master complaints.  
6 Plaintiffs are going to file them on time, right? And then  
7 we'll -- the responses are stayed. And then the issues will  
8 be joined, I think, right plaintiff? Are we going to see any  
9 surprises do you think, plaintiffs?

10 MR. SLATER: I hope not, Your Honor.

11 THE COURT: Okay.

12 UNIDENTIFIED COUNSEL: It'll surprise us.

13 THE COURT: Short form complaints. Can we get that  
14 finalized by the 26th?

15 MR. NIGH: Your Honor, this is Daniel Nigh. We sent  
16 our proposal for the short form complaints to defendants. I  
17 don't believe we've received any response back from them.

18 THE COURT: Yeah. I think, if I remember right,  
19 they said they're going to respond by June 14th. So we'll put  
20 that on the agenda for June 26th.

21 MR. NIGH: Fine.

22 THE COURT: Insurance information. Can I hear from  
23 the defendants on this first, given plaintiff's letter?

24 MR. GOLDBERG: Sure, Your Honor. This is Seth  
25 Goldberg. You know, it's our understanding that all of the



1 defendants are to produce insurance policies that had  
2 insurance policies have produced them. I understand Teva, you  
3 know, provided something different. And that's something that  
4 Teva will work out with plaintiffs.

5 And as we indicated in our letter, to the extent  
6 there are reservation of rights letters, you know, we're --  
7 and to make that determination whether they've been issued.  
8 And you know, would supplement production with those to the  
9 extent there are any.

10 THE COURT: Well, I have a letter from plaintiffs,  
11 maybe it was updated, that says there was no disclosure by  
12 CHP, Torrid (phonetic), Hetero. What do we do with those?

13 MR. GOLDBERG: So I think -- yeah, I think the -- I  
14 think the issue is that, you know, and I think what plaintiffs  
15 are viewing as no disclosure, the result is because there is  
16 no policy. And I think what -- the way this was approached  
17 was some of the parties simply just sent an email with their  
18 policy to plaintiffs, not a formal Rule 26 disclosure with a  
19 caption and a response, attaching the policy. We just  
20 provided the policy.

21 So you know, for instance, in the case of CHP, or  
22 the case of Torrid, there isn't a policy. With respect to  
23 Hetero, it is my understanding that Hetero USA, which is the  
24 only Hetero entity in the -- in the MDL that's been served and  
25 is being represented in the MDL, does not have a policy. I'm

1     sorry, was not subject to the core discovery order, because it  
2     is not a API manufacturer or finished dose manufacturer. It  
3     is -- it views itself to be the FDA liaison only.

4             THE COURT: Okay. So plaintiffs, are you satisfied  
5     with Mr. Goldberg's representation that CHP and Torrid have no  
6     insurance to disclose?

7             UNIDENTIFIED COUNSEL: Yeah. I mean, if they have  
8     nothing, they have nothing. I was going to suggest, listening  
9     to Mr. Goldberg speak, that it might make sense, so that we  
10    don't have ambiguity and everybody knows exactly where we  
11    stand, if the defense could send us -- it even can be done by  
12    a letter, it's fine -- listing each of the parties that were  
13    subject to the order and just confirming what they have  
14    produced. Or if there's no insurance, to say there's no  
15    insurance, so that nobody is having to keep together a bunch  
16    of emails so everybody has it in one place.

17            And I think, you know, we added also that we thought  
18    that it would be a good idea to speak to the defense just so  
19    we can talk through the insurance issues and make sure that  
20    nothing's being missed. For example, it looks like these are  
21    claims made policies that we've seen, and we had some question  
22    about whether they were current stage policies, whether there  
23    were any tails on other policies, just to make sure that every  
24    stone's been unturned, you know, overturned, and just to make  
25    sure nobody misses anything. We just want to be reasonable

1 that, you know, one document that says this is everything, and  
2 then talk to the defense and make sure that, you know,  
3 nobody's missed anything along the way.

4 MS. COHEN: And Judge, this is Lori Cohen. I can  
5 just comment here on behalf of Teva because there was a  
6 reference in the letter to you under side B that we said there  
7 was no need to disclose, which isn't accurate. We actually  
8 did a pleading saying that we were disclosing our insurance  
9 information consistent with the order and pursuant to Federal  
10 Rules of Procedure 26A:1a(4), just like the order said.

11 Our response is saying more than you need to hear,  
12 Judge. But since we're one of the main defendants, we said  
13 that Teva is self-insured beyond any award anticipated in the  
14 case at this time. And so we actually disclosed in a pleading  
15 to make it very clear that we were stating this on behalf of  
16 our clients and ourselves, and we do think it's compliant.

17 And basically we said that because the Rule 26:A  
18 that we referenced requires disclosure of any insurance which  
19 may be liable to satisfy all or part of the possible judgment.  
20 We think we have disclosed that, but we're happy to talk  
21 further with Mr. Slater and the plaintiff team. There were no  
22 reservation rights letters. But I think we do disagree with  
23 the statement that we said there was no need to disclose it,  
24 because we actually disclosed in these pleadings.

25 UNIDENTIFIED COUNSEL: I think we're explaining a

1 semantic issue here. If I understand Ms. Cohen in her  
2 disclosure, which I think we understood very well, they were  
3 saying we have excess policies that your case isn't worth  
4 enough to get close to those excess policies, so you don't  
5 need to know what they are. That's my street interpretation  
6 of it. So I think if there's an insurance policy that's in  
7 existence, needs to be disclosed.

8 THE COURT: Well, let me -- let me -- if I had to do  
9 it over again, I would make my order more specific to avoid  
10 these sorts of problems. I think all the response of  
11 defendants' disclosures should be in writing. The failure to  
12 submit something in writing does not -- should not necessarily  
13 be deemed to mean they have no insurance. Plaintiff doesn't  
14 know if they are just ignoring the direction to advise them of  
15 the insurance. Excess policies have to be identified, and  
16 reservation of rights, and declaration letters have to be  
17 produced. That's what I intended to mean by my order.  
18 Granted it wasn't as clear as it could be, but I'm going to  
19 clarify the order. And to the extent the disclosure wasn't  
20 done in accordance with the old order, I'll just order it be  
21 supplemented.

22 Rather than putting burden on defendants, Mr.  
23 Slater, to prepare a list of responsive defendants and what  
24 they said, I think the burden should be on plaintiffs in that  
25 regard. I think the plaintiffs should put together what

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1 disclosures they have. And if there's something missing,  
2 let's get it identified and let's get it produced, okay?

3 MR. SLATER: We will, Judge. If I understand you  
4 want us to send them a letter saying this is what our  
5 understanding is as of what's been produced. And to the  
6 extent there's anything that either -- if there's a party that  
7 has no insurance, please disclose that so we (inaudible)

8 THE COURT: Yes.

9 MR. SLATER: If there's anything else, please let us  
10 know if we missed it.

11 THE COURT: And you should also -- you should also  
12 identify who the plaintiffs think the responsive defendants  
13 are so the plaintiffs and defendants are on the same page with  
14 that.

15 MR. SLATER: Will do.

16 THE COURT: Okay. So my order is going to say the  
17 response has to be in writing. Excess policies have to be  
18 identified. Reservation of rights and declaration letters  
19 have to be produced. There's a continuing obligation,  
20 obviously, to supplement that disclosure. And we'll give the  
21 defendants more time to do that in the event they haven't done  
22 it to date.

23 Okay. Number six, streamlined service protocol.  
24 You can submit it to the Court. We'll sign it right away.  
25 That's perfect.

1 Plaintiff fact sheets. Ms. Cohen, I know this was  
2 important to you, so I'd like to stay on top of it.

3 MS. COHEN: Yes. Yes, exactly, Your Honor. And we  
4 are -- we've been working amongst the defense group on that.  
5 And we will have a first draft of the plaintiffs' fact sheet,  
6 the personal injury plaintiff, circulated by no later -- no  
7 later than this Friday, the 14th.

8 THE COURT: Great.

9 MR. SLATER: Fine.

10 MS. COHEN: And then we're working on the other two,  
11 that is (unidentified) for the third-party payer and consumer  
12 class representative. And we intend to get that circulated  
13 hopefully by next Wednesday the 19th. So we'll have them both  
14 in the plaintiffs' hands. Hopefully we can hear back from  
15 them quickly so we can discuss them with you on the 26th.

16 THE COURT: Fantastic. I guess the plaintiffs  
17 should work on the defendants' fact sheet, right?

18 MR. SLATER: We certainly can -- we can start to do  
19 that and speak to the defendants. I think it's going to  
20 depend on how things are structured in discovery. You know, I  
21 think that in terms of general discovery we probably don't  
22 need a fact sheet. I would think those will become more  
23 relevant when we get to a bellwether process, but we can  
24 certainly start to do that as well.

25 THE COURT: Okay. Well that ball is in the

1 plaintiffs' court. If you want the defendants to prepare fact  
2 sheets, the different categories of defendants, then the  
3 ball's in plaintiffs' court to get a first draft to the  
4 defendants.

5 MR. SLATER: Will do.

6 THE COURT: ESI protocol, fantastic. Just send it  
7 to the Court. We'll take care of entering it.

8 The stipulation for dismissal, I think the  
9 defendants going to get back to you by the end of this week.  
10 That's great. Hopefully we can discuss it on the 26th if we  
11 have to.

12 Document repositories. Sounds like -- I don't  
13 remember. Were we talking about a joint repository, or  
14 separate repositories for plaintiffs and defendants?

15 MR. GOLDBERG: Separate repositories, Your Honor.

16 THE COURT: Okay. So defendants are working on  
17 their issue?

18 MR. GOLDBERG: Yeah, defendants have identified and  
19 we're working on creating a repository.

20 THE COURT: Fantastic. Coordination of state cases.  
21 It looks like -- I don't know if Judge Kugler has spoken to  
22 the state judges yet, but if he hasn't he will. It's great  
23 that so far they -- looks like they seem to be on board with  
24 coordination. We'll have to see how that develops.

25 MR. GOLDBERG: Yeah, Your Honor. Just giving you

1 two cases, Runo and Orlowsky. We entered the stipulation in  
2 both cases that was ordered in Runo and hasn't been answered  
3 by the Court, and I'll ask to get that sent, that coordinates  
4 defendants' response to the complaint in those cases to any  
5 sort of responses, put it in the MDL. But it doesn't  
6 coordinate those cases for purposes of discovery.

7 THE COURT: Oh. Okay.

8 MR. GOLDBERG: So we would ask if Your Honor or  
9 Judge Kugler could reach out to those judges. The court in  
10 Orlowsky has set a scheduling conference for July 18. And we  
11 would think if Judge Kugler could reach out to that judge in  
12 advance of that, that may -- that may help things.

13 But again, Victor Orlando, who was in Court last --  
14 a few weeks ago, did a brief to coordinate those actions. So  
15 there shouldn't be a problem, but it may be helpful if Judge  
16 Kugler reaches out to the judges in the New Jersey Court  
17 actions.

18 THE COURT: I agree with you, and we'll take care of  
19 that. It looks like the Chicago case, is that active?

20 MR. SLATER: That is active, and there's been  
21 motions crafted. We filed -- the only defendant in that  
22 action is Walgreen's. And pursuant to their indemnity  
23 agreement that our client, that SALCO (phonetic) has, we have  
24 attempted to join that action. There's been motion practice  
25 with respect to that. And no discovery issues in the near --



1 in the near term in that case. So it may be better with  
2 respect to that case, since we have a little time to see how  
3 the motions play out. But we would envision trying to get  
4 that matter coordinated to the extent it is still in existence  
5 as this case proceeds.

6 THE COURT: Just to double check, do you think it  
7 would be helpful if this Court reaches out -- Judge Kugler or  
8 I reaches out to the judge in Chicago to just touch base with  
9 them about what's happening here?

10 MR. SLATER: I do, because that is, you know, sort  
11 of the basis of our join in is to get the action in for  
12 Federal Court so that we could get it put into the MDL.

13 THE COURT: Okay. We'll -- we'll take care of it.

14 MR. SLATER: Okay.

15 THE COURT: We'll take care of it. Okay, Losartan,  
16 the other two Sartans, plaintiffs do you have any idea when  
17 you're going to move before the MDL? And defendants,  
18 plaintiffs want to know if you'll oppose the inclusion.

19 MR. HONIK: Your Honor, Ruben Honik. We do intend  
20 to file. I apologize I'm not in my office, and I from memory  
21 cannot recall if the panel is meeting in July and not again  
22 until September. I believe that's the case. And if so, we'll  
23 be targeting the September hearing.

24 There is, as everyone I believe knows already, a  
25 Losartan and Irbesartan class case. There is to my knowledge

1 at least one stand alone Losartan bodily injury case. I'm  
2 informed there will be more.

3 And candidly, regardless of how large the pool of  
4 Losartan and Irbesartan cases are, the petition I think should  
5 be favorably viewed on JPML inasmuch as we're not asking them  
6 to create a Sartan MDL. We already have it. We just wish to  
7 expand it to include other recalled products. And we're  
8 confident that the Court will view it that way, or the panel  
9 will view it that way.

10 And yes, we very much would like to know if this is  
11 a petition that can be joined in with the defendants. We  
12 can't figure any reason for these cases to go anywhere but to  
13 Camden.

14 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I  
15 think -- I think most of the defendants would agree with that.  
16 We haven't heard from all of them, and there may be, you know,  
17 there may be some defendants who talk about 43 parties that  
18 have, you know, a different insurance. But there may be some  
19 joinder by some of the defendants, but not all of the  
20 defendants, which never presumably seem persuasive --

21 So I would just encourage Ruben, you know, to let's  
22 connect on that before you end up filing a petition.

23 THE COURT: Yeah.

24 MR. HONIK: Absolutely we'll do that. And I'm  
25 heartened by your answer, Seth. Thank you.

1           THE COURT: Mr. Honik, just a suggestion. I  
2 understand the practical difficulty the defendants have trying  
3 to rope 43 defendants or so into one position. But in the  
4 event they can't get that unanimity, it would seem to me that  
5 it would be persuasive to the panel if you could just speak on  
6 behalf of, you know, what we consider the sort of targets or  
7 the main defendants in this case, the API people we've been  
8 talking about. I think their inclination would carry more  
9 weight than a peripheral defendant who may object.

10           MR. HONIK: Absolutely. Absolutely.

11           THE COURT: Okay. We -- we finished the written  
12 agenda. I think we're making progress. Are there any other  
13 issues that the parties think it would be helpful to address  
14 now?

15           MR. SLATER: Nothing for the plaintiffs.

16           MR. GOLDBERG: Nothing from the defendants, Your  
17 Honor.

18           THE COURT: I spoke to Judge Kugler. He's going to  
19 be at the next conference, obviously. I think what we'd like  
20 to do if the schedule permits, and the timing permits, is  
21 we'll have the discovery conference in the morning and then  
22 just roll right into Judge Kugler's conference if that's okay  
23 with you. And I'm going to suggest to Judge Kugler that just  
24 like we sat down in the jury room after last conference and  
25 talked informally, that we do the same thing for a few minutes

1 on the 26th, and some of the questions that I couldn't answer,  
2 the big picture, case management type issues about  
3 bellwethers, and trials, and Daubert and all that, you can get  
4 input from Judge Kugler on that, which I think would be  
5 helpful as we move forward.

6 UNIDENTIFIED COUNSEL: Great.

7 THE COURT: So I'm going to ask Judge Kugler for his  
8 indulgence to do that. And I think it would be helpful to  
9 move the -- move the case along.

10 All right? Thank you everybody. Again, I  
11 appreciate your indulgence moving up the time of the call.  
12 We'll see you on the 26th. If any issues -- we talked about  
13 the DCO. Be happy to set up a phone call on short notice to  
14 address any issue you want on the DCO or any other issue  
15 anybody wants to address.

16 Thank you very much. Have a good day, Counsel.  
17 We're adjourned.

18  
19 (Proceedings concluded at 3:44)  
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25

1 C E R T I F I C A T I O N

2 I, Sue Wynne, court approved transcriber, certify  
3 that the foregoing is a correct transcript from the official  
4 digital audio recording of the proceedings in the above-  
5 entitled matter to the best of my ability.

6  
7 /s/ Sue Wynne 6/17/19

8 SUE WYNNE DATE

9  
10 /s/ Patricia A. Hallman

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